

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE:)
)
BRENDA ANN CARTER,) CIVIL ACTION FILE NO.:
)
Plaintiff,) _____
)
vs.)
)
MERCANTILE ADJUSTMENT)
BUREAU, LLC,)
)
Defendant.)
)
)

COMPLAINT FOR VIOLATION OF THE FAIR DEBT COLLECTION

PRACTICES ACT, 15 U.S.C. § 1692 ET SEQ., AS AMENDED

I. INTRODUCTION

This is an action for actual and statutory damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., as amended, (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION AND VENUE

Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, and pursuant to 28 U.S.C. § 1367 for pendent State Law Claims. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and the Defendant transacts business here.

III. PARTIES

Plaintiff, Brenda Carter, is a natural person residing in the City of Cartersville, Bartow County, State of Georgia, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

Defendant, Mercantile Adjustment Bureau, LLC, is a limited liability corporation and collection agency, organized under the laws of the State of New York, and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6). The Defendant’s principal place of business and operation is located at 6390 Main Street, Suite 160, Williamsville, New York.

IV. FACTUAL ALLEGATIONS

(1)

The Defendant is engaged in the collection of debt allegedly owed to another.

(2)

Defendant engages in the purchase or other acquisition of debt for the purpose of collection.

(3)

Much of the debt acquired by Defendant is in long-term default and/or included in Bankruptcy proceedings.

(4)

On or about January 4, 2008, Plaintiff filed for protection from her Creditors under Chapter 13 of the United State Bankruptcy Code, in the Northern District of Georgia, Rome Division, with her spouse. Their case was assigned number 08-40024, and was confirmed on or about March 13, 2008.

(5)

In Plaintiff's Chapter 13 Bankruptcy case, she named Sears as a Creditor on "Schedule F" (listed as, and in care of, "Central Credit Services, Inc.") on her Voluntary Petition. The debt evidenced by this account was, upon information and belief, purchase by Defendant, its subsidiaries, agents, assignees and/or other related entity.

(6)

On or about October 9, 2009, Mercantile Adjustment Bureau, LLC, made a credit inquiry on Plaintiff's Experian credit report, which reports the Plaintiff's participation in a Chapter 13. A true and exact copy of Page 8 of said "Experian credit report" is attached hereto as "Exhibit A."

(7)

Plaintiff's Experian credit report states in the Public Records section that the Plaintiff filed for Chapter 13 in January, 2008, case number 08-40024MGD. A true and exact copy of Page 2 of said "Experian credit report" is attached hereto as "Exhibit B."

(8)

On or about January 11, 2010, the Defendant mailed a collection letter to Plaintiff, Brenda A. Carter, collecting for a debt owed to LVNV Funding for \$7,331.40. The letter states the previous owner of said debt was Sears. A true and correct copy of said "collection letter" is attached as Exhibit "C".

(9)

At all times relevant hereto, the Defendant had constructive and actual notice of the Plaintiff's Bankruptcy and her representation by counsel.

V. CAUSE OF ACTION

Plaintiff repeats, re-alleges, and incorporates by reference hereto Paragraphs 1 through 9 above.

(10)

Defendant's actions against the Plaintiff constitute numerous and multiple violations of the FDCPA in that Defendant has attempted to collect a debt in contravention of the law; has made false and misleading statements regarding the debt; has intentionally interfered, physical or otherwise, with the solitude, seclusion and/or private concerns or affairs of the Plaintiff; has invaded and intruded upon Plaintiff's right to privacy; and has communicated with a consumer known by the Defendant to be represented by counsel. (See 15 U.S.C. § 1692b(2), 15 U.S.C. § 1692b(6), and 15 U.S.C. § 1692e(10), amongst others.)

VI. SUMMARY

Plaintiff repeats, re-alleges, and incorporates by reference hereto Paragraphs 1 through 10 above.

(11)

As a result of the Defendant's illegal violations of the FDCPA, Plaintiff has and continues to suffer actual damages and emotional distress in the form of humiliation, anger, anxiety, fear, frustration, embarrassment, amongst other negative emotions, as well as suffering from unjustified and abusive invasions of personal privacy at the Plaintiff's home.

(12)

Defendant is liable to the Plaintiff for actual and statutory damages.

(13)

Defendant is liable to the Plaintiff for all attorney's fees and costs associated with Defendant's violations of the FDCPA.

WHEREFORE, Plaintiff prays:

- (a) That this Complaint be filed, read and considered;
- (b) That this Court award Plaintiff actual damages pursuant to 15 U.S.C. § 1692(k)(a)(1) and for the emotional distress suffered as a result of the Defendant's willful violations of the FDCPA and invasions of privacy;
- (c) That this Court award Plaintiff statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692(k)(a)(2)(A);
- (d) That this Court award Plaintiff costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692(k)(a)(3); and

(e) For such other and further relief as may be just and proper.

Respectfully submitted this 15th day of October, 2010.

BERRY & ASSOCIATES

/s/
Timothy H. Paschall
Georgia Bar Number: 565670
Attorney for Plaintiff

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Atlanta, Georgia 30324
(404) 235-3300
Fax: (404) 235-3333
Tim@MattBerry.com

Experian™

cord of requests for your credit history

make your credit history available to your current and prospective creditors and employers as allowed by law. Experian may list these inquiries for up to two years so that I will have a record of the companies that accessed your credit information.

P I may not have initiated the following inquiries, so you may not recognize each source; report these requests to you only as a record of activities, and we do not include any of these requests on credit reports to others.

Filed 10

- of credit information about you to those with a permissible purpose, for example to:
- other creditors who want to offer you preapproved credit;
- an employer who wishes to extend an offer of employment;
- a potential investor in assessing the risk of a current obligation;
- Experian Consumer Assistance to process a report for you;
- your current creditors to monitor your accounts (date listed may reflect only if it's most recent request);
- a static copy of your credit report provided to a subsequent user necessary to complete your mortgage loan application.

These inquiries do not affect your credit score.

Prepared for
BRENDA A CARTER
Report number
2016-2549-55

Report date
September 14, 2010
www.experian.com/disputes
P.O. Box 2002, Allen, TX 75013

HSBC NV CARD SERVICES
1247 SW 69TH AVE
TIGARD OR 97223
No phone number available

CREDIT ONE BANK
PO BOX 98873
LAS VEGAS NV 89193
(877) 825-3242

Date
Nov 17, 2008

Date
Sep 2, 2008

HSBC NV CARD SERVICES
1247 SW 69TH AVE
TIGARD OR 97223
No phone number available

CREDIT ONE BANK
PO BOX 98873
LAS VEGAS NV 89193
(877) 825-3242

Date
Nov 17, 2008

Date
Sep 2, 2008

| | |
|-----------------------------------|--------------|
| RKSCREDIT & COLLECTION | <i>Date</i> |
|)CORPORATE DR | Oct 14, 2009 |
| ADDRESS PA 19605 | |
| , phone number available | |
| ERCENTILE ADMNT BUR | <i>Date</i> |
| 90 KYN ST S-160 | Oct 9, 2009 |
| LILAVILLE NY 14221 | |
| , phone number available | |
| SURENT CAPITAL SERVIC | <i>Date</i> |
| CASEMAN ST | Dec 30, 2008 |
| LEEMVILLE SC 29601 | |
| , phone number available | |

EXHIBIT A



A world of insight

Prepared for
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P.O. Box 2002, Allen, TX 75013
Page 2 of 12

EXHIBIT "B"

Case 4:10-cv-00111-M Document 1 Filed 10/18/10 Page 10 of 11

This information is generally removed seven years from the initial missed payment that led to the delinquency. Missed payments and most public record items may remain on the credit report for up to seven years, except Chapters 7, 11 and 12 bankruptcies and unpaid tax liens, which may remain for up to 10 years. A paid tax lien may remain for up to two years. Transferred accounts that have not been past due remain up to 10 years after the date the account was transferred.

Potentially negative items or items for further review

| Item records |
|--|
| BARTOW CO SUPERIOR CT COUNTY COURTHOUSE CORTERSVILLE GA 30120 phone number available |

| Credit items |
|---|
| BANK OF AMERICA PO BOX 1390 NEWFOLK VA 23501 (800) 441-0130 Partial account number 549104055069.... |

| Item records |
|---|
| CHEASE BANK USA PO BOX 15298 WILMINGTON DE 19850 (800) 955-9900 Partial account number 549104055069.... |

P.O. Box 9016
Williamsville, NY 14231-9016

12344944
Forwarding and address correction requested

CDSINFO

MERCANTILE
Innovative Solutions. Exceptional Results.

| ACCOUNT NUMBER | REFERENCE NUMBER |
|------------------|-----------------------|
| 5121075007080141 | 12344944 |
| | AMOUNT ENCLOSED \$ |

MAKE CHECK PAYABLE TO:

16272



BRENDA A CARTER
88 JEWELL RD NW
CARTERSVILLE, GA 30121-9256

Mercantile Adjustment Bureau, LLC
P.O. Box 9016
Williamsville, NY 14231-9016

OR

Secure online payment can be made at:
<http://www.mercantilewebpymt.com>
Pass Phrase: 35793

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

Mercantile Adjustment Bureau, LLC
PO Box 9016
Williamsville, NY 14231-9016

ACCOUNT NO. 5121075007080141
REFERENCE NO. 12344944

BRENDA A CARTER
88 JEWELL RD NW
CARTERSVILLE, GA 30121-9256

01-11-10
Prev Cred: SEARS
Cur Cred: LVNV FUNDING LLC

Your account with LVNV FUNDING LLC has been listed with our office for collection. The balance due is \$7331.40.

Please be advised that our client has authorized us to offer you substantial savings to settle this account. We are authorized to settle this account for reduced amount. This offer is good for a limited time only. Full payment of \$3429.75 must be received on or before 01-27-10.

Contact our office or send payment immediately to take advantage of this limited time offer!

Respectfully,

Jennifer Hartford
Jennifer Hartford
Mercantile Adjustment Bureau, LLC
P.O. Box 9016
Williamsville, NY 14231
1-866-716-1545

THERE WILL BE A \$20.00 FEE ADDED ON ALL RETURNED CHECKS.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.